IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 809 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
RATHOD HIRALAL DOLAJI - Respondent

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Appearance :
Mr. M.A. PATEL, LD. APP for Appellant:
MR DK MODI for Respondent:
MR MD MODI for Respondent:

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 14/07/2006

ORAL JUDGMENT

1. The State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, challenging the judgment & order of

acquittal dated 7/2/2004 passed by learned Jt. JMFC, Kapadwanj in Criminal Case No. 1662 of 1995, acquitting the accused/ respondent of the charges under Section 2 (1 a) (a) (b) (m) and 2 (ix) (d) read with Section 7 and 16 of the Prevention of Food Adulteration Act, 1954 (herein after referred to as 'PFA Act').

2. The facts in short deserve to be narrated as under:-

The original complainant Food Inspector while discharging his duties as such in Kheda district on 11/7/1994 visited the store of the accused run in the style & title Kamlesh Kirana Stores, Halim Shopping Centre, Kapadwanj in the company of panch witness. After gathering primary information about the store and after introducing himself as Food Inspector and after notifying his intention of collecting the food sample, purchased 450 grams of black pepper out of about 6.00 kgs lying in the shop. The requisite notice in Form-6 under Rule 12 came to be issued. The office copy thereof is at exhibit-33 on record which bears signature of the panch witness and the accused. The sample food article was divided into 3 parts and collected in a odourless clean glass bottles. The bottles were sealed in accordance with law and necessary serial number of Local Health Authority was affixed thereon. The entire

procedure of collecting sample, stirring and sealing it was done in presence of panch witness and panchnama was also drawn. One sample out of 3 collected was sent to Public Analyst, Rajkot for analysis. Necessary memorandum in Form No.7 was filled and impression of seal used for sealing the sample was also sent separately to the Public Analyst. The remaining 2 parts of sample food article were sent to Local Health Authority as required under law. The sample food article was found to be adulterated as it was not in conformity with the provisions of Prevention of Food Adulteration Rules, 1955 (herein after referred to as PFA Rules). The Public Analyst opined the same to be adulterated and sent his report. The report and other papers were submitted to Local Health Authority for obtaining necessary sanction under Section 20 of the PFA Act for lodging prosecution. The competent authority issued its sanction for lodging prosecution against the vendor. Upon the sanction being accorded the complaint came to be filed on 12/9/1995. The Local Health Authority informed the accused about his right to have the sample food article further tested in Central Food Laboratory as per Section 13 (2)of the Act. It seems that the said liberty was availed and sample food article was sent to Central Food Laboratory for analysis. On receipt of report of Central Food Laboratory characterising the food article to be adulterated on account of presence

of mineral oil, the court framed charge and after recording plea of denial, proceeded with the trial. The trial court has come to the conclusion that as the prosecution has failed in proving its case beyond doubt the accused was not guilty and, therefore, recorded acquittal of the accused vide order dated 7/2/2004 which is impugned in the present appeal.

3.The State has preferred the appeal challenging the impugned order of acquittal. This Court [Coram: Mr. Justice D.N. Patel] had passed the following order :-

"Having heard the learned Additional Public Prosecutor fr the appellant State and the evidence on record and the nature of the judgment passed by the trial court, the appeal is admitted. Bailable warrant in the sum of Rs. 5000/- be issued against the opponent. The registry is directed to prepare the paper book on or before 23rd June, 2006. The Registry is further directed to enlist this appeal for final hearing on 5th July, 2006. "

Thus the matter is listed for final disposal.

4. Shri. Patel, learned APP has submitted that the order impugned in the present appeal deserve to be quashed and set aside and the respondent deserved to be dealt with in accordance with

law as the subject food article has been unequivocally found to be adulterated. Shri. Patel has submitted that when there is a conclusive proof available in form of the certificate of Central Food Laboratory, it was not open to the trial court to acquit the accused/respondent only on account of so called infirmity noticed in the procedure. The trial court ought not to have held that there was non compliance with provision of Rule 14 of the Rules in as much as the original complainant Food Inspector has unequivocally stated in his deposition that the sample food article was collected in clean odourless glass bottles. When such a deposition has been recorded by the trial court the same ought to have been believed and therefore, there ought not to have been any question of non compliance with the provisions of Rule 14 as required. Shri. Patel has submitted that the offence is serious, affecting the entire society and therefore, the same deserve to be dealt with strictly and therefore the order which is erroneous does not deserve to be sustained and the same deserve to be quashed and set aside.

5. Shri. Modi, learned counsel appearing on behalf of respondent has submitted that, this being an acquittal appeal the respondent has a right to urge all the possible submissions available in support of the order of acquittal. Shri. Modi

has submitted that the Food Inspector in his deposition has mentioned the serial number affixed on the sample food article which is not tallying with the number he has stated in his cross examination. This deposition would be sufficient to show that there was serious doubt about identity of the sample. This submission of Shri. Modi can not be accepted, in view of the fact that the Central Food Laboratory has issued a report which supersedes all the reports and the serial number mentioned in Central Food Laboratory's report is tallying with the number mentioned by Food Inspector in his examination in chief and, therefore, there can not be said to be any possibility of doubt about identity of the sample in question.

6. Shri. Modi has further submitted that the trial court has not confronted the accused with the findings of Central Food Laboratory recorded in its certificate at exhibit-11 while putting questions and recording statement of the accused under section 313 of Cri.P.C. 1973. Shri. Modi has also submitted that a cursory glance at the charge would also show that the trial court has not framed charge based on the findings of the Central Food Laboratory. This submission of Shri. Modi also does not merits acceptance, in view of the fact that, the charge read as it is, would go to show that the factum of adulteration is very much present in the charge and it is not

the case of the accused that he did not have the knowledge and or information about the charge of which he is being subjected to. Had it been the case then it would have been articulately pointed out before the trial court. Similarly he is being confronted by the trial court while recording his statement under Section 313 of Cr.P.C., as to the material found against him. Therefore, this court is of the view that this being not a material defect the same need not be elaborately discussed as it would be of no avail to the accused.

7. The last ground raised by Mr. Modi deserves consideration. Shri. Modi has submitted that there is lack of positive evidence in respect of due compliance with provisions of Rule 14 of the PFA Rules. Mere statement by the Food Inspector / original complainant in his examination-in-chief about cleanliness of bottles would be of no avail to the prosecution when there is no other evidence positively showing that there was due compliance with provisions of Rule 14 of the PFA Rules. The provisions of Rule 14 are mandatory in nature and therefore, it was bounden duty cast upon the prosecution to adduce evidence indicating absolute compliance with Rule 14 of the PFA Rules. Shri. Modi has relied upon a decision of this Court in respect of the subject food article i.e. black pepper, in case of STATE OF

GUJARAT Vs. MOHAMADBHAI ISMAILBHAI VORA, reported in 2005(1) FAC, 60, wherein this Court while deciding the acquittal appeal has dismissed the same on the ground of non compliance with mandatory provisions of Rule-14.

8. This submission of Shri. Modi as it is stated herein above deserve to be accepted. This being an acquittal appeal, this Court will ordinarily not disturb the findings and decision of the trial court in absence of any patent irregularity or basic infirmity which will result into miscarriage of justice. The order impugned in the present appeal does not call for any interference and, therefore, the appeal deserve to be dismissed and is accordingly dismissed.

[S.R. BRAHMBHATT, J]

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